

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

LAMONT LAPRADE

)

) CR No. 10-19

) CV No. 16-888

MEMORANDUM ORDER

In this matter, a jury convicted Defendant, who proceeded at trial pro se with appointed standby counsel, on four counts of violating 18 U.S.C. 2113(a) and (d); 18 U.S.C. § 371; and 18 U.S.C. § 924(c). Subsequently, on May 9, 2012, he was sentenced to a term of imprisonment of 190 months. Defendant appealed, and the Court of Appeals affirmed. Defendant then filed a Motion pursuant to 28 U.S.C. § 2255. The Motion was initially denied, and then reconsidered by Opinion and Order dated February 12, 2015. Therein, I reconsidered and rejected Defendant's argument regarding Alleyne v. United States, 133 S. Ct. 2151 (2013). I also found, however, that a certificate of appealability should issue as to that conclusion. While Defendant's consequent appeal was pending, on June 20, 2016, he filed a counseled Section 2255 Motion, raising Johnson v. United States, 135 S. Ct. 2552 (2015), and moved to stay the Motion pending the outcome of his request, to the Court of Appeals, for permission to file a second or successive Section 2255 motion. This Court granted the stay by Order dated June 21, 2016. Defense counsel subsequently withdrew, due to a conflict of interest. By documents filed on our docket on February 9, 2017, the Court of Appeals reversed this Court's Alleyne decision, and ordered resentencing. Defendant was resentenced, and an Amended Judgment filed, on July 17, 2017.

Defendant appealed the Amended Judgment, arguing that this Court should have considered Johnson, and the Court of Appeals rejected his appeal. In so doing, the Court noted that “the District Court lacked – and will continue to lack – jurisdiction to consider LaPrade’s Johnson argument unless and until this Court grants his still-pending application for leave to file a successive § 2255 motion.” United States v. LaPrade, No. 17-2705 (3d Cir. May 2, 2018).

Before the Court is Defendant’s Motion to Amend 2255 Second Unsuccessive to Initial 2255, which is accompanied by a Motion to lift the stay. There is no suggestion that Defendant has obtained permission from the Court of Appeals to proceed with the Section 2255 Motion. At this juncture, therefore, his Motions are denied. The denial is without prejudice to Defendant to pursue his Motions pending certification by the Court of Appeals.

AND NOW, this 27th day of June, 2019, IT IS SO ORDERED.

BY THE COURT:



Donetta W. Ambrose
Senior Judge, U.S. District Court